

CITY OF ELLIOT LAKE



**CITY COUNCIL - SPECIAL MEETING
AGENDA**

04-16-2019

Tuesday, April 16, 2019

5:00 pm

Committee Room

Pages

1. CALL TO ORDER

2. ROLL CALL

3. DECLARATIONS OF CONFLICT OF INTEREST

4. PUBLIC PRESENTATIONS

5. CORRESPONDENCE LIST

6. REPORTS

6.1 April 15, 2019. Report from the Chief Administrative Officer

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re: Agreement of Purchase and Sale - 151 Ontario Avenue

6.2 April 15, 2019. Memo from the Chief Administrative Officer

re: Review of offer to purchase land on Hwy 108.

As this matter deals with proposed disposition of land by the municipality it may be discussed in closed session under Section 239(2)(c) of the Municipal Act

7. NOTICES OF MOTION

8. PUBLIC QUESTION PERIOD

9. BY-LAWS

9.1 By-Law No. 19-13

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Being a by-law to authorize the execution of the agreement of purchase and sale with 2205730 Ontario Inc. for the vacant parcel of land described as 151 Ontario Avenue.

10. CLOSED SESSION BUSINESS

11. ADJOURNMENT



STAFF REPORT

REPORT OF THE CHIEF ADMINISTRATIVE OFFICER OR THE CONSIDERATION OF COUNCIL

OBJECTIVE

To provide Council with information regarding the agreement of purchase and sale of 151 Ontario Ave, the former Algo Mall property.

RECOMMENDATION

THAT the report of the Chief Administrative officer dated April 15, 2019 be received;

AND THAT Council approve the purchase of 151 Ontario Avenue, the 13-acre former Algo Mall property by passing the necessary bylaw to adopt the agreement of purchase and sale with 2205730 Ontario Inc.

AND THAT the purchase be pre-approved as a 2019 expense in the municipal budget and referred to the ad hoc budget committee accordingly.

A handwritten signature in black ink, appearing to read "D. Gagnon".

Daniel Gagnon
Chief Administrative Officer

BACKGROUND

The 13-acre former Algo Mall property has been lying fallow for several years since the demolition of the mall. The property owner Eastwood Mall Inc. kept the vacant land taxes current but largely ignored the site. Some efforts under property standards over the years were only mildly effective. In the fall of 2018, a large decaying excavator that had remained on site for years was ultimately removed under a property standards order.

At a special Council meeting on December 19, 2018 Council reviewed a draft agreement of purchase and sale with Eastwood Mall Inc. for the 13-acre parcel with a purchase price of \$950,000 plus a 5% realty fee (\$47,500). That agreement bylaw was not passed, falling in a tie vote (3-3). Councillor Cyr declared a conflict of interest and did not vote.

Shortly after that meeting, a proponent emerged indicating their interest in securing land downtown and investing in a mix of commercial/residential uses with ideally 5 acres of land. The City, in some capacity or another, has demonstrated various interests in the property, but none of them require the entire 13 acres.

ANALYSIS

Legal advice was sought and obtained throughout the steps that followed.

It was confirmed that the City could legally consider and express an interest in a subject property to anyone it deemed fit. Given that opinion, at a closed session meeting on March 6, 2019 Council directed the CAO to indicate to 2205730 Ontario Inc. (the proponent) that it would be willing to consider purchasing 7 acres of the 13-acre Algo Mall site at an upset cost of \$750,000 subject to the proponent having clear title to the property. In this early context, the proponent would simply retain 5 acres of the land and sell the city the 7 acres.

The concern emerged that the 13-acre parcel must be severed in order to create the 7 and 5 acre parcels. The municipality controls that process by drafting a reference plan and declaring the land surplus etc. More time is needed to clarify the shape and exact dimension of the severed lot. That process will take some time and it is recommended that the city simply purchase the entire 13-acre parcel, undertake to do the severance in due time and sell 5 acres to the proponent for \$150,000 as soon as practical. See attached legal opinion on this matter.

The proponent is prepared to commit to build an appropriately scaled residential/commercial mixed building(s) on the subject 5-acre parcel with typical covenants on building deadlines and site plan details.

The proponent purchased 151 Ontario Ave from Eastwood Mall Inc. and their transaction closed on April 11, 2019. The proponent has demonstrated clear title.



Armed with clear title and legal advice throughout, there are no legal reasons why the attached agreement of purchase and sale for the property cannot be executed to fulfill the direction of Council from March 6th.

FINANCIAL IMPACT

The \$750,000 net purchase (plus applicable taxes and legal costs) should be referred to the 2019 budget exercise for detailed review to secure and identify the required funding sources. In the meantime, a cursory glance at reserve levels indicated there two existing discretionary reserves that have sufficient funds for this purchase if deemed appropriate by Council

Community Hub Reserve: \$442,000

Land Sales / Purchases Reserve: \$451,000

It bears noting that the ultimate sale price of the 5-acre parcel of land at \$150,000 (\$30k/acre) meets and exceeds the price established by Council for serviced municipal land in the commercial/industrial land profile (set at \$25/acre).

The city can carry the \$150,000 for the time it takes for the severance and ultimate land sale with no impact using cash / working funds.

Should the purchase be approved, the City will want to secure and improve the site as soon as weather and resources permit. This will bring costs that will be developed and presented to the 2019 budget. At first glance, several steel gates, sign and light posts must be removed as well as loose rocks and gravel, grass and shrubs cut and landscape otherwise tidied. There may be a need for new signage and access controlling measures.

LINKS TO STRATEGIC PLAN

This project aligns with the City's Strategic Plan through;

- Capitalize on opportunities for diversification and community Growth
- Support local business community
- Development of strong partnerships

SUMMARY

Council has indicated it wishes to secure the former Algo Mall property site for a municipal purpose(s) and to facilitate economic development, tax revenue and private investment. In order to complete that direction, an agreement of purchase and sale for the 13-acre parcel is necessary.





April 12, 2019

EMAIL: dgagnon@city.elliottlake.on.ca

DAN GAGNON
CHIEF ADMINISTRATIVE OFFICER
THE CORPORATION OF THE CITY
OF ELLIOT LAKE
45 HILLSIDE DRIVE NORTH
ELLIOT LAKE ON P5A 1X5

Dear Mr. Gagnon:

RE: Land Transfer - 151 Ontario Avenue
Our File No.: 1461- 40

I write to provide you with a legal opinion on the potential transfer of land regarding 151 Ontario Avenue in Elliot Lake.

As you know, the subject site was the land on which the former Algo Centre Mall sat. As such, the lands are considered extremely sensitive and any discussion regarding transfer is seeped in emotion.

Currently, there is a purchaser for the said lands named, 2205730 Ontario Inc. 2205730 Ontario Inc. has purchased the subject site from the current owner, Eastwood Mall Inc. (The principal of Eastwood Mall is Robert Nazarian). The transfer took place yesterday for the amount of \$900,000.00.

In accordance with the direction provided in closed session, the City of Elliot Lake has an interest in approximately 7 acres of the subject site. 2205730 Ontario Inc. has agreed to transfer 7 acres of the subject site to the City for the amount of \$750,000.00. City Council has already committed to this transfer at this amount.

Before any transfer can take place from 2205703 Ontario Inc. to the City of Elliot Lake, it is necessary that the subject site be severed and the 7 acres be properly legally described. In order to do so, it is necessary to obtain an R plan and create a separate parcel. It is estimated that the time frame to obtain the legal description, R plan and consent from the Committee of Adjustment is a number months. It seems unfair to burden 2205730 Ontario Inc. with both the financial encumbrance and the administrative inconvenience associated with severing and transferring the lands.

Accordingly, it is my recommendation that now that 2205730 Ontario Inc. has clear title to the subject site, it transfer the entire site to the City at cost. I recommend that 2205730 Ontario Inc. transfer the subject site to the City for the price it paid, being \$900,000.00. Once the subject site is in the ownership of the City, the City may set about obtaining the necessary R plan, legal description and create the new parcel.

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In sum, it is my recommendation that the City purchase the subject site with clear title from 2205730 Ontario Inc. for the amount of \$900,000.00. Once the transfer has occurred, the City should undertake to have the lands legally described and severed.

I trust this is satisfactory for your purposes, however, I am happy to discuss in greater detail, or attend your closed session meeting electronically if that would be suitable.

Yours very truly,
WISHART LAW FIRM LLP



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NMK:lh

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THE CORPORATION OF THE CITY OF ELLIOT LAKE

By-Law No. 19-13

Being a by-law to authorize the execution of the Agreement of Purchase and sale between the City of Elliot Lake and 2205730 Ontario Inc.

WHEREAS 2205730 Ontario Inc. is the legal owner of real property located at 151 Ontario Avenue in the City of Elliot Lake, Ontario, hereinafter referred to as the Subject Site;

AND WHEREAS the owner is desirous of selling the Subject Site;

AND WHEREAS the City is desirous of purchasing the Subject Site;

NOW THEREFORE the council of the Corporation of Elliot Lake, pursuant to section 9 of the *Municipal Act* 2001 s.o. 2001 c.25 Enacts as follows:

1. Execution of document: The mayor and city clerk are hereby authorized for and in the name of the Corporation to execute and affix the seal of the Corporation to the agreement dated April 16, 2019 between the City and 2205730 Ontario Inc., a copy of which is attached as Schedule "A" hereto. This agreement is for the purchase and sale of the Subject Site;
2. Schedule A: Schedule A forms part of this by-law;
3. Effective Date: This by-law takes effect on the day of its final passing. Passed in Open Council this 16th day of April, 2019.

DATED this 16th day of April, 2019

Natalie Bray – Clerk

Dan Marchisella – Mayor

**AGREEMENT OF PURCHASE AND SALE
(FOR USE IN THE PROVINCE OF ONTARIO)**

PURCHASER, THE CORPORATION OF THE CITY OF ELLIOT LAKE agrees to purchase from

VENDOR 2205730 ONTARIO INC. the following land as described below and referred to as the properties.

PIN 31627-0173 PCL 7242 SEC AES; PT BLK A PL M152 GUNTERMAN PT 1 1R3717;
ELLIOT LAKE

PIN 31627-0171 PCL 7149 SEC AES; P TBLK A PL M150 GUNTERMAN; PT BLK A PL
M152 GUNTERMAN; PT TOWNSHIP OF GUNTERMAN PT 1-4 1R3586; S/T LT100784;
ELLIO TLAKE

PIN 31627-0172 PCL 7343 SEC AES; PT BLK A PL M150 GUNTERMAN PT 1 1R3783;
ELLIOT LAKE

PURCHASE PRICE: NINE HUNDRED THOUSAND DOLLARS (CDN\$900,000.00)

DEPOSIT: Purchaser submits ONE HUNDRED THOUSAND DOLLARS (CDN\$100,000.00) negotiable cheque payable upon acceptance to the Vendor's Solicitor to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion.

The Vendor agrees to sever the property and to provide to the solicitor for the Purchaser a registered Plan of survey for completion of the transaction. Once the land has been severed and consent has been received the Purchaser shall transfer to the Vendor ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00) representing payment of the lands that the Purchaser will be retaining.

SCHEDULE(S) A - Sketch outlining property that will be severed showing the land to be retained and the lands to be severed and sold to the Purchaser; attached hereto form(s) part of this Agreement.

1. **CHATTELS INCLUDED** None

2. **FIXTURES EXCLUDED** None

3. **RENTAL ITEMS:** The following equipment is rented **and not** included in the Purchase Price. The Purchaser agrees to assume the rental contract(s), if assumable: None

4. **IRREVOCABILITY:** This Offer shall be irrevocable by the Vendor **until the 17th day of April, 2019**, after which time, if not accepted, this Offer shall be null and void and the deposit shall be returned to the Purchaser in full without interest.

COMPLETION DATE: This Agreement shall be completed on the 24th of April, 2019 or sooner if both the Vendor and Purchaser agree to same. Upon completion, vacant possession of the property shall be given to the Purchaser unless otherwise provided for in this Agreement.

5. **NOTICES:** Vendor hereby appoints his Solicitor as Agent for the purpose of giving and receiving notices pursuant to this Agreement. Any notice relating hereto or provided for herein shall be in writing. This offer, any counter offer, notice of acceptance thereof, or any notice shall be deemed given and received, when hand delivered to the address for service provided herein or, where a facsimile number is provided herein, when transmitted electronically to that facsimile number.

FAX No (For delivery of notices to Vendor)
FAX No. 705-949-2465 (For delivery of notices to Purchaser)

7. **HST:** Is payable by the Purchaser and **in addition to** the Purchase Price. If this transaction is not subject to HST the Vendor agrees to provide on or before closing a certificate to that effect.

8. **TITLE SEARCH:** Purchaser shall be allowed until 5:00 p.m., **on the 19th day of April, 2019, (Requisition Date)** to examine the title to the property at his own expense and until the

earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property, **that its present use "commercial"** may be lawfully continued and that the principal building may be insured against risk of fire. Vendor hereby consents to the municipality or other governmental agencies releasing to Purchaser details of all outstanding work orders affecting the property, and Vendor agrees to execute and deliver such further authorizations in this regard as Purchaser may reasonably require.

9. **FUTURE USE:** Vendor and Purchaser agree that there is no representation or warranty of any kind that the future intended use of the property by Purchaser is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the present use of the property. If within the specified time referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Vendor and which Vendor is unable or unwilling to remove, remedy or satisfy and which Purchaser will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Vendor or his Solicitor shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objecting going to the root of title, Purchaser shall be conclusively deemed to have accepted Vendor's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registerable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyers receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.

12. **DOCUMENTS AND DISCHARGE:** Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Vendor. If requested by Purchaser, Vendor will deliver any sketch or survey of the property within Vendor's control to Purchaser as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Purchaser on completion, is not available in registrable form on completion, Purchaser agrees to accept Vendor's Solicitor's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same on title within a reasonable period of time after completion, provided that on or before completion Vendor shall provide to Purchaser a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, together with

a direction executed by the Vendor directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Purchaser acknowledges having had the opportunity to inspect the property prior to submitting this Offer and understands that upon acceptance of this Offer there shall be a binding agreement of purchase and sale between Purchaser and Vendor.

14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Vendor. Pending completion, Vendor shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Purchaser may terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Vendor is taking back a Charge/Mortgage, or Purchaser is assuming a Charge/Mortgage, Purchaser shall supply Vendor with reasonable evidence of adequate insurance to protect Vendor's or other mortgagee's interest on completion.

15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Vendor complies with the provisions of the Planning Act by completion and Vendor covenants to proceed diligently at his expense to obtain any necessary consent by completion.

16. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Affidavit of Residence and Consideration, be prepared in registerable form at the expense of Vendor, and any Charge/Mortgage to be given back by the Purchaser to Vendor at the expense of the Purchaser. If requested by Purchaser, Vendor covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O. 1990.

17. **RESIDENCY:** Purchaser shall be credited towards the Purchase Price with the amount, if any, necessary for Purchaser to pay to the Minister of National Revenue to satisfy Purchaser's liability in respect of tax payable by Vendor under the non-residency provisions of the Income Tax Act by reason of this sale. Purchaser shall not claim such credit if Vendor delivers on completion the prescribed certificate or a statutory declaration that the Vendor is not then a non-resident of Canada.

18. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Purchaser.

19. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Vendor and Purchaser or by their respective Solicitors who may be specifically authorized in that regard.

20. **TENDER:** Any tender of documents or money hereunder may be made upon Vendor or Purchaser or their respective Solicitors on the day set for completion. Money may be tendered by bank draft or cheque certified by a Chartered Bank, Trust company, Province of Ontario Savings Office, Credit Union or Caisse Populaire.

21. **FAMILY LAW ACT:** Vendor warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless Vendor's spouse has executed the consent hereinafter provided.

22. **UFFI:** Vendor represents and warrants to Purchaser that during the time Vendor has owned the property, Vendor has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Vendor's knowledge and belief no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.

23. **CONSUMER REPORT:** The Purchaser is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.

24. **AGENCY:** Unless otherwise specified in the Declaration of Representation, it is understood that all brokers (if any) involved in this transaction are working for the Vendor. Purchasers are at liberty to see representation from a broker under separate contract or receive customer service from the Vendor's broker.

25. **AGREEMENT IN WRITING:** If there is conflict between any provision written or typed in this Agreement (including any Schedule attached hereto) and any provision in the printed portion hereof, the written or typed provision shall supersede the printed provision to the extent of such conflict. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Purchaser and Vendor. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. This Agreement shall be read with all changes of gender or number required by the context.

26. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

27. **ACKNOWLEDGEMENT:** The parties hereto acknowledge having received a signed copy of the accepted Agreement of Purchase and Sale.

The Vendor and Purchaser agree that the signatures and/or initials on this Agreement or its acceptance, rejection or modification, can be transmitted by FAX, or similar electronic transmission, and that communication by such means will be legal and binding on all parties.
DATED at Sault Ste. Marie in the Province of Ontario, this day of April, 2019.

SIGNED, SEALED AND DELIVERED, in the presence of:
and seal:

IN WITNESS whereof I have hereunto set my hand

THE CORPORATION OF THE CITY OF ELLIOT
LAKE

Per: _____

I have the authority to bind the Corporation
(Purchaser)

We, the Vendors, agree to the above Offer.

DATED at City of Sault Ste. Marie in the Province of Ontario, this day of April, 2019.

SIGNED, SEALED AND DELIVERED, in the presence of:
and seal:

IN WITNESS whereof I have hereunto set my hand

2205730 ONTARIO INC.

Per: _____
Judy Guidoccio, President

I have the authority to bind the Corporation
(Vendor)

Solicitor for Purchaser:

Nuala Kenny
Wishart Law Firm LLP
390 Bay Street
Suite 500
Sault Ste Marie, ON
P6A 1X2

Phone 705-949-6700
Fax 705-949-2465

Solicitor for Purchaser:

